IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 33961 of 2005(R)

PETITIONER:

K.V.DAVIS, S/O.CHAKKUNNY, BRAHAMMAKULAM,
KARAPPARAMBAN HOUSE, PRIYDARSHINI NAGAR,
LOURDEPURAM, EAST FORT, TRICHUR.

BY ADV. SRI.SABU GEORGE

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
HOME SECRETARY, TRIVANDRUM.

2. THE DIRECTOR GENERAL OF POLICE, KERALA
TRIVANDRUM.

3. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI.

4. THE DEPUTY SUPERINTENDENT OF POLICE,
CB CID, THRISSUR.

5. THE SUPERINTENDENT OF POLICE,
CB CID, PALAKKAD.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.33961/07

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.295/2002 OF THE THRISSUR TOWN EAST POLICE STATION DATED 18/6/2002.

EXT.P1(a):- TRUE COPY OF THE STATEMENT IN CRIME NO.295/2002 OF THE THRISSUR TOWN EAST POLICE STATION DATED 18/6/2002.

EXT.P2:- TRUE COPY OF THE REPORT OF THE SUB INSPECTOR, THRISSUR TOWN EAST POLICE STATION DATED 10/07/2002.

EXT.P3:- TRUE COPY OF THE SEIZURE MAHAZER DATED 8/7/2002.

EXT.P4:- TRUE COPY OF THE SEIZURE MAHAZER DATED 10/7/2002.

EXT.P5:- TRUE COPY OF THE SEIZURE MAHAZER DATED 16/8/2002.

EXT.P6:- TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN R.P.NO.927/2002 IN O.P.NO.29361/2002 DATED 20/12/2002.

EXT.P7:- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO.29361/2002 DATED 25/2/2003.

EXT.P8:- TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER DATED 2/9/2003.

EXT.P9:- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.20265/2005 DATED 12/8/2005.

[TRUE COPY]

R.BASANT, J.

W.P.C.No.33961 of 2005

Dated this the 15th day of October 2007

J U D G M E N T

The petitioner is the de facto complainant in a crime registered as crime No.295/2002 of Trichur Town East police station. The alleged incident took place on 18/6/2002. The F.I.R was recorded on the very same date. Investigation was conducted initially by the local police. Later, the investigation was taken over by the CBCID. Investigation is now complete. Final report has already been filed. Four persons have been arrayed as accused. The crux of the allegations in the said final report is that the petitioner was allegedly robbed using force on 18/6/2002. Rs.4.69 lakhs in cash and 354.50 gms of gold ornaments which the petitioner was allegedly carrying were taken away using force by the accused persons. Some of the accused persons are named in the F.I.R. Investigation by the local police revealed the alleged complicity of the accused persons though there was a contention that there was dispute between the petitioner and one of the accused regarding return of amounts allegedly due from the petitioner to that accused. Be

that as it may, the investigating officers - initial as well as the later, do now appear to have accepted that the allegations of theft/robbery is correct and that the four accused persons are responsible for such theft/robbery.

2. The short grievance of the petitioner is that though an amount of Rs.4.69 lakhs and 354.5 gms of gold ornaments were allegedly thieved/robbed, only an amount of Rs.63,000/- has been recovered. The balance has not been recovered. Neither the initial investigating officer from the local police nor the subsequent investigating officer from the Crime Branch has effectively interrogated the accused persons or others concerned and no serious steps have been taken to recover the entire property thieved/robbed. This, in short, is the grievance raised.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that everything possible has been done to closely interrogate the accused persons and to conduct a proper and efficient investigation. But unfortunately, the police have not been able to trace the entire booty. The accused persons did advance a case that there was a dispute between one of the accused and the petitioner herein about

return of amounts due from the petitioner to the said accused. They, however, took the stand that no further amounts were available with the petitioner and the accused have not robbed the petitioner of any other article or the cash other than those which have been recovered. The investigating officer did not accept that version of the accused persons; but interrogation of the accused or other investigation conducted did not help the police to trace the unrecovered portion of the booty.

4. The learned counsel for the petitioner has advanced detailed arguments. At the request of the learned counsel for the petitioner, the case diary was called for. I have perused the case diary also.

5. The alleged incident had taken place on 18/6/2002. Two investigating officers from two different agencies of the Kerala Police have already conducted the investigation. I have perused the case diary in detail. I am of the opinion that the present request to entrust the investigation to any other agency for further investigation is without any merit. There is no reasonable prospect at all of the unrecovered portion of the booty being recovered now. I am unable to agree that the

investigating officers are guilty of any contumacious lapses in the investigation of the crime. It may be unfortunate that the entire booty has not been recovered. But the fact remains that I am unable to perceive any such contumacious conduct or inadequacy on the part of the investigating officers to justify the entrustment of the investigation at this belated stage to any other investigating officer.

6. This writ petition is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007

R.BASANT, J

W.P.C.No.33961 of 2005

Dated this the 6th day of March 2007

O R D E R

Heard the learned Public Prosecutor at whose instance the matter has been brought up. The learned Public Prosecutor submits that the investigation is complete. Sanction for filing the final report has been sought from the superior officer by the

investigating officer. He, therefore, wants an expeditious disposal of this writ petition.

2. The pendency of this writ petition cannot obviously stand in the way of a further report being filed under Section 173(8) by the investigating officer. In fact, I do note that in the order dated 17/01/2006, the investigating officer has been directed to file the final report before this court. Investigating officer shall be at liberty to file the final report. The case diary shall be placed before the court for my perusal on the next date of posting. Call this petition for hearing and disposal finally in the 500 list on 26/03/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006